

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

TODD BUI,

Petitioner,

v.

DEPARTMENT OF HOMELAND  
SECURITY, *et al.*,

Respondents.

Case No. C04-0304L

ORDER GRANTING MOTION FOR  
RECONSIDERATION AND  
AWARDING FEES AND COSTS

This matter comes before the Court on “Petitioner’s Motion for Reconsideration of Order Denying Application for Attorney’s Fees.” Petitioner filed a timely motion for reconsideration asserting manifest error in the Court’s determination that respondents’ positions before and during litigation were substantially justified. The Court requested additional briefing on the motion and the matter is now ripe for consideration.

In support of his argument, petitioner notes that respondents recently admitted that they had misapplied the good moral character standard for a number of years, including the period of time in which petitioner’s application for naturalization was pending. Respondents acknowledge that, during the relevant period of time, they applied an “overly stringent” good moral character standard “based on an applicant having an insignificant criminal law violation,” but argue that that particular defect was not at work in petitioner’s case. It is undisputed,

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1 however, that, until petitioner sought judicial review, the only justification for the rejection of  
2 petitioner's application was that he was "arrested and charged with Driving Without A License  
3 and Making False Statement to Public Servants" and subsequently "found guilty and convicted  
4 of Driving Without License in the King County District Court . . . ." Petition for Review, Ex. G  
5 (Dkt. # 1). Throughout the entire administrative process, respondents relied upon an  
6 insignificant criminal law violation (*i.e.*, driving without a license) to deny petitioner's  
7 application for naturalization. In Lee v. Ashcroft, C04-449 (W.D. Wash.) and now this case,  
8 respondents have all but acknowledged that "an isolated traffic offense does not preclude a  
9 naturalization applicant from establishing good moral character." Decl. of Robert J. Orkin at 3  
10 (Dkt. # 26). A rejection based on such an isolated, insignificant criminal violation was not  
11 substantially justified. Regardless of the fact that respondents were able to articulate additional  
12 reasons for the rejection of petitioner's application after he sought judicial review, respondents'  
13 pre-litigation position was not substantially justified and petitioner is entitled to an award of  
14 attorney's fees under the Equal Access to Justice Act, 28 U.S.C. § 2412.

15  
16 For all of the foregoing reasons, petitioner's motion for reconsideration is  
17 GRANTED. The Court having already found that petitioner was the prevailing party and that  
18 his attorney's fees and costs were reasonable, it is hereby ORDERED that respondents shall  
19 reimburse petitioner for fees in the amount of \$9,647.20 and costs in the amount of \$169.27, for  
20 a total of \$9,816.47.

21 DATED this 26th day of April, 2005.

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24 Robert S. Lasnik  
25 United States District Judge  
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